BOOK REVIEWS.

KENNETH M. SPENCE, *Editor-in-Charge.*

THE SCIENCE OF JURISPRUDENCE. By HANNIS TAYLOR. New York: The Macmillan Co. 1908. pp. lxv, 676.

The "higher criticism" is busy with this latest product of Mr. Hannis Taylor's industry and it will not be long before the original documents from which it was compiled will all have been identified. That the elaborate chapter on the External History of Roman Law (pp. 48-192) was to a large extent "conveyed"—not bodily, but piecemeal—from Muirhead's "Introduction to the Private Law of Rome" and Ledlie's translation of Sohm's "Institutes of Roman Law," supplemented *passim* by liberal contributions from Greenidge's "Roman Public Life," Howe's "Studies in the Civil Law" and Bryce's "Studies in History and Jurisprudence"; that the part of the work devoted to Analytical Jurisprudence (pp. 502-628) is in large part taken over from Holland's "Elements of Jurisprudence," Bar's "International Law" and other standard legal writings—in short that this pretentious work is little more than an arrangement of material gathered by the author (or shall we say, editor) from a variety of sources and ingeniously dovetailed together into a fairly harmonious whole—these facts have already been established by the researches of several learned critics. (See Prof. Goudy of Oxford in the *Juridical Review* for January, 1909, Prof. Roscoe Pound in the *Illinois Law Review* for March, 1909, and Prof. W. F. Dodd in *The American Political Science Review* for February, 1909.) From all of which it will be observed that the problem of the "Genesis of Genesis" is as nothing compared with that of the authorship of Mr. Hannis Taylor's writings.

But, laying aside for the time being the rôle of the moralist, our quarrel with the author is not so much that he has put forth as his own the work of other and, may we add, better men, but that he has made such bad work of his borrowings. Surely Muirhead and Sohm and Bryce and the rest were entitled to have their contributions to Mr. Taylor's literary fame combined to some purpose. The work is announced on the title page as "A Treatise in which the growth of positive law is unfolded by the historical method and its elements classified and defined by the analytical." But there is in fact no unfolding of the growth of positive law and nothing that deserves to be called a classification of its elements. The several parts and chapters of the work are *disjecta membra,* without relation to one another and without organic unity. The longest chapter in the book, that on The External History of English Law (pp. 193-427), is an outline of English political history, has little to do with law and nothing, one may say, with private law. The chapter on English Law in the United States (a great opportunity, greatly abused) is short (only 36 pages) and is almost entirely devoted to showing how little English precedent had to do with the formation of our Constitution. The chapter on Roman and English Law Combined (another great opportunity missed) is confined to a rapid survey of the constitutional systems of the Latin-American states and of the private law of Scotland, South Africa, Ceylon and other out-

lying regions. It will be seen that there is no lack of history, but that the closest scrutiny fails to disclose anything that can be called "historical method," and that the history furnishes no material for such analysis as the book contains. Contemplated from the point of view of the "Science of Jurisprudence," truly it is without form and void.

It must not be supposed, however, that the book contains nothing of Mr. Hannis Taylor. Two arguments there are (and if the work has a *raison d'etre* it is the establishment of these two propositions) which could have emanated from no other jurist of our time and the credit for which will not be claimed by any of the distinguished scholars who speak to us from its pages. These two original contributions to jurisprudence are, first, the "far-reaching generalization, now submitted to the consideration of students of the science of jurisprudence for the first time, so far as the author knows" (preface, XV) "that, out of the blending of Roman and English law there is rapidly arising a typical State-law system whose outer shell is English public law * * * and whose interior code is Roman private law;" and, second, the reassertion of the claims of Pelatiah Webster as the inventor of our federal system of government.

As to the former of these, if the distinguished author means anything more than the obvious fact, which has long been a commonplace among students of political science, that the English constitutional system has been adopted, with varying measure of success, by many states whose private law is derived from that of Rome, his exposition fails to make it clear. If he means to imply that the Roman private law is gaining at the expense of the English common law and is tending to supplant the latter in any state in which it has taken root the statement is grotesquely untrue. As to the argument—assuming it to have a legitimate place in a treatise on jurisprudence—that P. Webster is the father of the Constitution, it is not too strong a statement to say that the slightest first-hand acquaintance with the literature of our constitutional history would have rendered it impossible for Mr. Taylor to fall into such an error. Even the author's "good fortune" in unearthing the "epoch-making document" in which Webster gave his views to the world, fails to excuse this infatuation.

But we have wandered with our author far from The Science of Jurisprudence and can return to it only long enough to remark that the treatise which shall combine the historical and analytical methods in a real science of jurisprudence for English readers is still to seek.

MOORE ON FACTS, a Treatise on Facts or the Weight and Value of Evidence. By CHARLES C. MOORE. Northport, N. Y.: Edward Thompson Company. 1908. 2 vols. pp. clxviii, 1612.

The author designed this treatise "to facilitate the preparation for trial, the argument and the decision of questions of fact, by exhibiting what has been said by United States, Canadian and English judges concerning the causes of trustworthiness and untrustworthiness of evidence, and the rules for determining its probative weight." This purpose, and more, has been admirably accomplished. In the preparation of this work the author undertook the work of a pioneer in a territory of the law that has hitherto appeared a most unpromising and uninviting wilderness. When one con-